In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. **77-772**

JAMES M. DAWSON, Administrator of
Northern New England Carpenters Health and Welfare Fund,
New Hampshire Masons Health and Welfare Fund,
New Hampshire Plumbers Health and Welfare Fund,
New Hampshire Sheet Metal Works #297
Health and Welfare Fund,
PETITIONER,

vs.

FRANCIS E. WHALAND, Commissioner,
Department of Insurance,
State of New Hampshire,
RESPONDENT,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

STANLEY M. BROWN, *Esq.*

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Petitioner James M. Dawson, Administrator of the aforesaid mentioned Health and Welfare Funds, respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on September 1, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit, which is not yet reported, is separately appended as Appendix "A". The opinion of the United States District

Court for the District of New Hampshire which is not yet reported, is separatley appended as Appendix "B".

JURISDICTION

The judgement of the Court of Appeals for the First Circuit in this case was entered on September 1, 1977. The jurisdiction of this Court is invoked under Title 28 U. S. C. § 1254(1) and Title 28 U. S. C. § 2101(c).

QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 and the Supremacy Clause of the Constitution of the United States preempt application of Chapter 57 of the New Hampshire Laws of 1976 to the Health and Welfare Funds administered by the Petitioner.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

The Supremacy Clause of the Constitution of the United States [Article VI, paragraph second], pertinent provisions of the Employee Retirement Income Security Act of 1974 [29 U. S. C. 1001 et. seq.] pertinent provisions of Chapter 57 of the New Hampshire Laws of 1976 [R. S. A. 415:18-a, R. S. A. 419:5-a, and R. S. A. 420:5-a] and federal regulations [29 C. F. R. § 2560.5(g), 42 F. R. 27425 (5/27/77)] are involved in this action and are set forth in Appendix "C".

STATEMENT OF THE CASE

The Petitioner, Plaintiff below, is an administrator of various Health and Welfare Funds which provide benefits to employees, located throughout the Northeastern United States, through employer contributions and the purchase of group health insurance. Each of the Health and Welfare Funds administered by the Petitioner is an "employee benefit plan", within the meaning of the Employee Retirement Income Security Act (ERISA), and consequently is subject to the provisions of that act.

The Petitioner commenced this action by filing a petition for declaratory judgement and injunctive relief in the United States District Court for the District of New Hampshire against the Respondent, Defendant below, who is the Chief Executive Officer of the New Hampshire Department of Insurance.

The Petitioner sought a declaratory judgement that Chapter 57 of the New Hampshire Laws of 1976 was unconstitutional and preempted by ERISA insofar as it might otherwise apply to the Health and Welfare Funds which he administers. Chapter 57 is entitled "An act to alter the minimum mental illness coverage requirements under major medical and non major medical accident and health insurance and to decrease grants to community mental health services." Chapter 57 purports to require the inclusion of certain minimum mental health benefits in the insurance policies purchased by the Petitioner for the Health and Welfare Funds which he administers. The employee-beneficiaries of the Health and Welfare Funds in question have elected not to purchase such benefits in the past (Transcript of Hearing at 18), and a requirement to purchase such benefits may likely result in the bankruptcy of these Health and Welfare Funds. Transcript of Hearing at 24; affidavit of Richard Charpentier.

The Court of Appeals for the First Circuit affirmed the decision of the District Court that Chapter 57 was neither unconstitutional nor preempted by ERISA from its application to the Health and Welfare Funds administered by the Petitioners.

REASONS FOR GRANTING THE WRIT

I. THE EXTENT TO WHICH THE PREEMPTION PROVISION OF ERISA [29 U. S. C. §1144(a)] SHALL SUPERSEDE STATE LAW IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The instant action presents what has been described as "an important and fundamental question of federal preemption . . ." *Wadsworth v. Whaland* (C. A. 1st, September 1, 1977) at 2. That question is: to what extent does ERISA preempt state regulation of employee benefit plans? The importance of this

federal question derives, in part, from the fact that employee benefit plans, as was found by Congress [29 U. S. C. § 1001(a)] are growing rapidly and are increasingly interstate. In fact, in 1975, 45 million employees across the country contributed 31.6 billion dollars to employee benefit plans, and 15.1 billion dollars in benefits were paid from such plans during that same year. *See* The Handbook of Labor Statistics, 1975.

This large and growing method of security for millions of Americans was the subject of extensive consideration by Congress prior to the enactment of ERISA. *See e.g.* Hearings on H. R. 1045, H. R. 1046 and H. R. 16462 before the General Subcommittee on Labor of the House Committee on Education and Labor. Following lengthy hearings, Congress found it necessary to enact strict and detailed legislation to regulate these employee benefit plans (*See, e.g.* 29 U. S. C. §§ 1051-61, 1081-1102, 1021-51), for the protection of plan participants and their beneficiaries. 29 U. S. C. § 1001(c). That legislation (ERISA) has been called "the greatest development in the life of the American worker since social security" 120 Cong. Rec. S15742 (8/22/74) (Remarks of Senator Javits). Among the many sections in ERISA is the preemption provision entitled "Supersedure; effective date". 29 U. S. C. § 1144(a). An authoritative interpretation of that section has not yet been made, but since that issue is present in this action it should be finally decided by this Court's granting of this petition.

A final resolution of the ERISA preemption issue will have a most important effect on millions of Americans. It will determine whether employee benefit plans will be subject to supervision and regulation solely by the federal government or by the federal government to a limited extent, with duplicate or conflicting regulation by state governments. A ruling to the effect that all state laws are preempted from application to employee benefit plans would insure a uniformity of regulation for employee benefit plans across the country. *See*, 120 Cong. Rec. 29197 (1974) (Remarks of Congressman Dent).

Regardless of the eventual ruling on this issue, it is one of such national importance that it should be resolved by this

Court at the earliest possible time. The future impact that these employee benefit plans will have on our national economy will be determined to a large degree by the final determination of this important question of federal preemption.

II. THE INTERPRETATION OF THE PREEMPTION CLAUSE OF ERISA 29 U. S. C. 1144(a) HAS RESULTED IN CONFLICTING DISPOSITIONS WITHIN VARIOUS FEDERAL COURTS, RESULTING IN THE HINDRANCE OF THE ADMINISTRATION OF THESE PLANS

Three Federal District Courts have recently ruled that employee benefit plans were not subject to State regulation, because of the preemption clause of ERISA. *Hewlett-Packard Co. v. Barnes*, 425 F. Supp. 1294, (D. Cal. 1977); *Wayne Chemical Inc. v. Columbus Agency Services*, 426 F. Supp. 316 (N. D. Ind. 1977); *Azzaro v. Harnett*, 414 F. Supp. 473 (D. C. N. Y. 1976). The First Circuit Court of Appeals, in the instant action, along with another Federal District Court have reached the opposite conclusion. *Insurer's Action Council, Inc. v. Heaton*, 423 F. Supp. 921 (D. Minn. 1976).

With the continuing uncertainty as to the interpretation of the preemption clause of ERISA, as is evidenced by this conflict in decisions, the effective administration of the numerous employee benefit plans throughout the country is seriously hindered. The administrators of these multi-state plans are left in doubt as to whether a state has the power to regulate either the administration or contents of an employee benefit plan.

Plan administrators during the present state of uncertainty must either formulate different policies for each of the States in which the plan has a participant employee, based upon the belief that such state regulation is not preempted; or formulate a single policy for all of the participants regardless of the number of states in which the participants work or reside, taking the position that all state regulation of these plans is preempted. Obviously, the task presented by the former alternative is one which if not required, because of ERISA's broad preemption language, would relieve an administrator of a major

burden. *See, Dawson v. Whaland*, (D. C. N. H., 2/11/77) at 8. Furthermore, an incorrect guess by an administrator as to which course of action to follow could lead to serious consequences under the sanctions imposed by ERISA. *See, e.g.* 29 U. S. C. §§ 1021, 1133, 1105, 1131, 132(c), 1140.

The fact that this recent piece of legislation has already resulted in conflicting holdings by various Federal Courts throughout the country, emphasizes the need for an authoritative resolution by this Court. By granting this petition for certiorari, this Court will secure uniformity of judgements and resolve conflicts of opinion, on this important federal question, as well as aiding the effective administration of all employee benefit plans.

CONCLUSION

The preemption provision of ERISA has proven to be a fertile ground for litigation. It is also a provision which is of national concern because it will determine how employee benefit plans, which affect millions of Americans, are going to be regulated. Furthermore, without an authoritative ruling on this issue, employee benefit plan administrators are seriously hindered in the effective administration of those plans. Thus, an authoritative ruling by this Court is required, and Petitioner respectfully prays that this honorable Court grant this Writ of Certiorari directed to the United States Court of Appeals for the First Circuit.

RESPECTFULLY SUBMITTED,

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